In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1699

GLENN MICHAEL ROGERS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Southern District of Texas, petitioner was convicted of a narcotics violation under 21 U.S.C. 176a. The court of appeals affirmed *per curiam* (Pet. App. A).

Petitioner's sole claim is that the statute is subject to a timely assertion of the privilege against self-incrimination, in support of which he cites *Leary* v. *United States*, 395 U.S. 6. Unlike *Leary*, this is a

smuggling case, in which the statutory presumption available under 21 U.S.C. 176a was not employed (see II R. 2 pp. 264-287, 290);[1] in this circumstance the contention petitioner makes has been repeatedly rejected. See, *e.g.*, *Witt* v. *United States*, 413 F. 2d 303 (C.A. 9), certiorari denied, 396 U.S. 932; *Walden* v. *United States*, 417 F. 2d 698 (C.A. 5); *United States* v. *Houle*, 428 F. 2d 816 (C.A. 5), certiorari denied, 400 U.S. 882.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1971.

[1] "R." refers to the record from the court of appeals.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 429433 745